The City offers the following in response to the arguments advanced by the Company in its Initial Brief, and in response to the data provided by the Company in its Record Response RR DTE -2.

**1) The Company selectively quotes language from DTE 01-25 and in so doing ignores the central holding in DTE 01-25.**

At page 12 of the Initial Brief, the Company states:

> "The Company's valuation is consistent with department precedent establishing that *unamortized investment* under GL c 164 is represented by the company's *net book value*".

In support of this claim the Company cites the following language from DTE 01-25: "unamortized investment is equal to the book value of gross plant in service, net of accumulated depreciation" (DTE 01-25 p 5, DTE 98-89 p3). The Company is selectively quoting from the earlier rulings. The Company ignores the central holding in both cases which dealt with the formula for *calculating* the "accumulated depreciation" referenced in the sentence quoted by the Company.

In all prior cases (including DTE 02-11 which was decided several months after the ruling in DTE 01-25) the department required that accumulated depreciation be *calculated* for the streetlights to be sold, rather than *allocated* from the accumulated depreciation for system wide distribution assets to the streetlights to be sold. Note the following language from DTE 01-25:

> ". . .The Town's method computes rather than allocates accumulated depreciation for streetlights to be sold . . ." (DTE 01-25 p. 6)

The four steps in the Town's "calculation" are also described in DTE 01-25:

> The town calculated Commonwealth's unamortized investment in the Towns' streetlights by

1) obtaining from the Company the original cost and year placed in service for all streetlights in the towns;[1]
2) depreciating each vintage group of the town's lights using actual depreciation rates approved by the department;
3) assigning positive or negative value to the streetlights depending on whether or not they were fully depreciated; and
4) adding those values to arrive at a unamortized investment for each of the Towns. (DTE 01-25 p 4)

Three *calculations of* unamortized investment, using this four step process, in the three prior rulings, are reproduced in Exhibit PLC 2. The Company has acknowledged that all three calculations produce purchase prices that are below net book value.

> ". . . it is fair to say that the Company knew . . . the prior precedents of 98-89, 01-25 and 02-11 resulted in purchase prices below net book value."( Tr p 64)

This same admission, that the prior precedent produced purchase prices below net book value, is made at pages 62, 63, 64, 117, 118, 151, and 152 of the transcript. The Company calculated the amounts by which the earlier calculations of unamortized investment were below net book value at NSTAR CLV p 36, and 37. The department precedent does not support the Company's position that unamortized investment is equal to net book value.

**2) The Company selectively quotes language from the statute and in so doing misinterprets the intent of the statute.**

At page 3 of the Initial Brief the Company quotes the first two sentences of G.L. c 164 s 34A (b) and underlines and emphasizes the six word phrase "unamortized investment net of salvage value". The Company then repeats that six word phrase several

[1] The alternative calculation in DTE 01-25, calculated accumulated depreciation in the same fashion as the Boston Edison Method, except that the gross plant values were developed by the Company using current costs trended back to the date of the installation together with accurate vintage information. As long as early retirements and late retirements balanced out, this would be the equivalent of the actual history of additions and retirements, produced in the other cases.

times throughout the brief. The Company's statutory argument begins at page 14 of the brief:

> "The inclusion of net salvage costs in the streetlight valuation is required by G.L. c 164 s 34A" (Brief p 14)
> Net salvage value becomes negative whenever the cost of removal is greater than the salvage value that is obtained. . . . In this case, the City has underestimated the net book value . . . by approximately $1,000,000 . . .caused by the City's failure to account for the Company's streetlight related net salvage costs." (Brief p 16)

In fact, the components of "Net salvage" which the Company defines on page 16 as "the cost or removal" and "salvage value" are only included in the Section 34A compensation in certain circumstances, which circumstances do not apply in this case. A more complete review of subsection (b) of Section 34A makes this clear.

The complete subsection (b) uses the term "unamortized investment" three times, and this term presumably means the same thing each time it is used. The phrase "net of any salvage value" is used in both the first and fifth sentence and presumably means the same thing each time it is used. The phrase "unamortized investment allocable to such *acquired equipment*" in the second sentence, and the phrase "unamortized investment allocable to such *un-acquired equipment*" in the fifth sentence use parallel structure. These two sentences when read together are easier to interpret than when read in isolation.

A more complete quote of the relevant language from subsection (b) is as follows":

> "Any municipality . . . shall be required to compensate the electric company for its *unamortized investment*, *net of any salvage value obtained by the electric company under the circumstances* . . . In meeting this requirement, the municipality may acquire all or any part of such lighting equipment . . . upon the payment of the *unamortized investment allocable to such acquired equipment.* . . . In addition, the municipality may request that the electric company remove any un-acquired part of such lighting equipment. *Thereupon*, the municipality shall pay to the electric company the *cost of removal* by the electric company,

> along with the *unamortized investment allocable to such un-acquired* part, *net of any salvage value* attributable to the removed equipment. (G.L. c164 s 34A (b))

The first thing that is apparent upon reading the subsection as a whole is that "unamortized investment" , "salvage value", and "cost of removal" are three separate and distinct components of the compensation legislated by the Act. Unamortized investment is always paid. Salvage value and removal cost are only paid in certain circumstances.

The second sentence and the fifth sentence use parallel structure and are best understood when read together. The second sentence describes the compensation payable for the municipal lights that are acquired. The Community pays the *"the unamortized investment allocable to the acquired equipment".* There is no reference to either salvage value or removal cost with respect to the "acquired equipment".

The fifth sentence describes the compensation payable for the municipal lights that are not acquired, in the circumstance in which the Community requests that the un-acquired municipal lights be removed. In this circumstance the Community must pay a) *"the unamortized investment allocable to the un-acquired equipment"* b) *"net of any salvage attributable to the removed equipment",* and c*)" the cost of removal".*

The parallel structure of the 2nd and 5th sentence is important. The compensation for the "acquired equipment" in the second sentence is *unamortized investment only* and clearly distinct from the three part compensation for "un-acquired and removed equipment" in the fifth sentence.

The fifth sentence makes clear that subsection (b) contemplates three separate and distinct concepts: "unamortized investment" which is separate and distinct from "salvage value", both of which are separate and distinct from "the cost of removal". The fact that the phrase "net of any salvage value" of the removed equipment, as used in sentence five, is separate and distinct from the phrase "cost of removal" of the removed equipment is important. This confirms the common sense interpretation that the phrase "net of any salvage value" is referring to the salvage obtained by the electric company. It is a component of "net salvage", (the other component being "cost of removal"). It is not equal to "net salvage". "Net of any salvage" as used in sentence five, has the same meaning that "net of any salvage" has in sentence one.

In the context of the separate and distinct compensation formulas for *acquired equipment* ("unamortized investment allocable to such acquired equipment" in sentence two) and *un-acquired and removed equipment* ("the cost of removal . . . along with the unamortized investment allocable to such un-acquired part, net of any salvage attributable to the removed equipment", in sentence five), the meaning of the first sentence becomes clear. The phrase in the first sentence is

> ". . . unamortized investment, net of any salvage value obtained by the electric company under the circumstances . . ."

"Unamortized investment" in sentence one means the same thing it means in sentence two and five. It is a concept that is separate and distinct from salvage value and removal cost. The phrase "net of any salvage value" in sentence one has the same meaning that the identical words "net of any salvage value" have in sentence five. Salvage value is "obtained by the electric company under the circumstances" described in sentence five, because the Company is removing and retaining un-acquired lights. Salvage value is not "obtained by the electric company under the circumstances" described in sentence two, because that sentence is describing the compensation payable for lights acquired by the community. That is the reason the second sentence limits the compensation for acquired lights to "unamortized investment" period.

The Company's interpretation that Section 34A requires the payment for *"net salvage"* attributable to *acquired equipment* (Brief p 16) can not be reconciled with the language of Section 34A, and in particular with the second sentence of subsection (b).

The Company implicitly recognizes the problem that the second sentence of subsection (b) creates for their interpretation of Section 34A. At page 9 and 17 of the Company's brief, the Company attempts to explain away the second sentence of the subsection as simply a reference to the allocation of unamortized investment between municipal lights and private lights. However the complete sentence makes clear that the legislature is referring, in fact, to a purchase of some but not all of the municipal lights:

> In meeting this requirement the municipality may acquire all or any part of *such lighting equipment* of the electric company upon payment of the unamortized investment allocable to *such acquired part*." G.L. c 164 s 34A (b)

The municipality has no right to purchase *all or any part of the* private streetlights. The municipality does have the right to purchase *all or any part of the* municipal lights. The compensation for *such acquired* streetlights is "the unamortized investment allocable to *such acquired part*" of the municipal lights. This compensation formula, in the second sentence, is the complete compensation formula for *all or any part of* the municipal lights that are acquired. Since Cambridge is purchasing all of the municipal lights, the compensation formula for those acquired lights is unamortized investment period.

The Company's interpretation that "unamortized investment is equivalent to net book value" (Initial Brief p 13) can not be reconciled with the clear language of Section 34A. The Company's interpretation that Section 34A includes language that requires the payment of "net salvage" attributable to the acquired equipment (Initial Brief p 16) can not be reconciled with the clear language of Section 34A.

3) **The Company attempts to justify a departure from the precedent for calculating un-amortizing investment because Cambridge is a single community service territory**.

At page 3 of the company's brief, the Company states:

> "In this case, the community seeking to acquire streetlight equipment from the Company is the sole municipality in the Company's service territory. As a result, the Company's records of account present the department with the requisite 'town specific' information necessary for valuation of the streetlight equipment subject to sale to the City of Cambridge."

All utilities are required to derive the net book value of streetlights in every community, every year. That is the legal standard that utilities are required to use to calculate the personal property tax on those streetlights (Boston Edison Company v Board of Assessors of Watertown 393 Mass 511). See the following reference to this case in DTE 03-98.

> "The methodology for determining the taxable value of utility personal property within a community has changed over the years as well. The current methodology is the result of a court judgment in Boston Edison Company v Board of Assessors of Watertown 393 mass 511 (1984), *which states that the taxable value of utility personal property within a community will be determined almost entirely from the utility's net book value*. Prior to this case, methodologies for arriving at the values for tax assessment purposes varied from community to community. " (DTE 03 – 98 Information Request Towns 1-3).

If the department had wanted to conclude that unamortized investment in Lexington, or Acton, or any other community, was a simply a matter of opening the Company's most recent tax records and inquiring what net book value was reported in the most recent year for tax purposes, that could have easily been done.

The problem in DTE 98-89 and DTE 01-25 was the not the unavailability of town specific net book value information on which streetlight personal property taxes had been computed. The Company used those net book value calculations in Harwich, Sandwich, Edgartown, Lexington and Acton to calculate the stranded costs presented by the Company in this proceeding.

There is nothing unique about the Company's ability to show the historical net book value calculation for the streetlights in Cambridge. Every utility is required to make this "net book value" calculation in every community, every year. The fact that the Company has a "net book value" calculation for Cambridge is no basis for a departure from pre-existing precedent.

4) **The Company's January 27 restatement of removal costs highlights the un-examined nature of, inconsistency of, and lack of completeness of this removal costs data.**

The Company's surprising willingness to assert claims for un-examined, un-reviewed, inconsistent and incomplete net salvage costs is simply stunning. Note for example the following claims of the Company regarding net salvage, which the Company defines as the amount by which removal costs exceed the salvage values obtained.

| | **City 1-15** | **CLV 2** | **CLV 2 rev** | **Variance City 1-15 to Hearing** | **Variance CLV 2 rev to Hearing** |
|---|---|---|---|---|---|
| Date | Dec 17 | Jan 14 | Jan 27 | | |
| | | | | | |
| 1989 | 13,991 | 36,756 | 36,756 | 157% | |
| 1990 | 36,000 | 82,229 | 82,229 | 127% | |
| 1991 | 39,833 | 75,880 | 75,880 | 90% | |
| Subtotal | 89,824 | 194,865 | | | |
| Average | | | | 125% | |
| | | | | | |
| 1992 | 190,045 | 190,045 | 184,289 | | 3% |
| 1993 | 111,489 | 111,489 | 157,905 | | 30% |
| 1994 | 83,026 | 83,026 | 30,821 | | 167% |
| 1995 | 53,603 | 53,603 | 8,412 | | 562% |
| 1996 | 83,536 | 83,536 | 8,353 | | 937% |
| 1997 | 17,141 | 17,141 | (28,141) | | 260% |
| 1998 | 33,630 | 33,630 | 32,826 | | 2% |
| 1999 | 24,962 | 24,962 | 9,979 | | 150% |
| Subtotal | | 597,432 | (404,444) | | |
| Average | | | | | 264% |

On December 17, 2004, 17 months after the negotiations with the City began, and two weeks after the deadline for any further discovery questions from the City, the Company raised the issue of over $1 million in net salvage cost for the first time. By the time of the Hearing on January 14, 2005, the claim for the three years 1989 to 1991 had increased by over $100,000. A review of Company's response to DTE Record Request 2 reveals that the Company overstated the claim, at the Hearing, for the eight years 1992 through 1999 by approximately $200,000. If you compare the net salvage value claimed in the Record Request response to the net salvage values claimed at the Hearing, there is *an annual average variance of 264%,* for the eight years 1992 through 1999.

The Company testified at the Hearing that the Company had incurred $861,275 in net salvage costs for the years 1989 thru 2003, (NSTAR CLV p 20), that had been incorporated into the company's formula for calculating annual depreciation (NSTAR CLV p19), which in turn was incorporated into the Company's accounting for its streetlight assets, all in accordance with

> "The accounting pronouncements of the Securities and Exchange Commission ("SEC") and the Financial Accounting Standards Board (FASB) . . ." and in accordance with "FERC's accounting regulations . . .in 18 CFR, part 101" all of which had been subject to annual audits "by its external auditors PriceWaterhouseCoopers (PWC) and periodic audit by FERC" (NSTAR CLV p 8)

On January 27, two weeks after giving this testimony, the Company produces negative salvage numbers that have an *average annual variance of 264%* from the net salvage values testified to at the Hearing. This is the reliability of the data that the Company proposes that the department use as justification for imposing over $1 million in "allocated" removal cost on the City.

Furthermore the Company's response to Record Request 2 confirms one of the major concerns expressed by the City in the City's Initial Brief. The claimed "net salvage" *does not include* insurance recoveries, contractor reimbursements, or positive salvage for the years 2000 through 2004. ( See Attachment RR DTE-2(a) Col E, as well as the Column labeled "Salvage and Other Credits" in Attachment RR-DTE-2(j), (k), (l), (m) and (n), the first page of that exhibit on the line for account 373, which in each case lists $0. for "Salvage and other Credits". )

The preponderance of the evidence would suggest that insurance recoveries and contractor reimbursements are also missing from the years 1992 through 1999. The Company's *most recently restated* numbers report $86,604 in those eight years for gross salvage and $491,044 for removal costs. (see Attachment RR-DTE-2(a) sum of Column E values vs. sum of Column D values for the eight years in question). But the Company stated at the Hearing :

> "For Cambridge in particular during the last decade, the cost of removal has been approximately four times greater than the value of gross salvage"

If this ratio held for the eight years 1992 to 1999, we would have expected to see a gross salvage number of approximately $120,000, (25% of the restated removal costs of $491,044) not the $86,604 shown. The first question, therefore, is whether salvage values have been under reported in the most recently restated data for this eight year period. At any rate, there does not appear to be any room in this gross salvage number for insurance recoveries and contractor reimbursements. Nor is there any other column on any of the detail data sheets provided that would include these insurance recoveries and contractor reimbursements.

The same regulation cited by the Company, at page 15 of the brief, that allows, as a matter of generic net book value accounting, for removal cost to be deducted from the accumulated depreciation account 108, also requires that the same account to be credited with "salvage value and any other amounts recovered such as insurance" ( FERC Chart of Accounts 18 CFR, Part 101, reproduced at Attachment City 1-9). It appears plain that this procedure was not followed by the Company, in Cambridge, for the years 2000 through 2004, because salvage value, insurance recoveries and contractor reimbursements are shown to be zero for each of those five years.

For those five years, at a minimum, net salvage has not been credited with "salvage values and other amounts recovered such as insurance" as required by the regulation. And it appears probable that the procedure required by the cited FERC regulation was not followed for years 1992 through 1999 either, because it is unlikely, given the math, that the net salvage number has been credited with "other amounts recovered, such as insurance".

This omission of salvage values, insurance recoveries and contractor reimbursements is only one example of the un-examined and un-reviewed assumptions used by the Company in developing three sets of removal costs over the past six weeks. (Which set of removal costs numbers, we must inquire, were audited by PriceWaterhouseCoopers ?)

In explaining the intent behind the department Record Request, Mr. Hanley stated:

> "What the department is looking for is some kind of way of ensuring that those numbers for that sub-account, how they were calculated, what assumptions are used and so forth, because all we can see is a total. We need to know what the components are, what the assumption are, how it was calculated"

The Company was less than forthcoming in its response to this record request in explaining the assumption used to generate the negative net salvage numbers claimed. A review of the data provided by the Company in response to the record request, makes clear that the numbers claimed in the past five years are apparently developed based on the "assumption" that salvage values, insurance recoveries and contractor reimbursements should not be factored into the calculation.

The City has other concerns about the data submitted by the Company over the past six weeks. For example, in spite of the fast changing nature of the removal cost and the impact that they have on the claimed accumulated depreciation values, the Company claimed on December 17, January 14, and January 27 that there was a "close correlation" between numbers for accumulated depreciation balances on the Company books and the accumulated depreciation balances developed using these claimed removal costs.

**Accumulated Depreciation Balances Offered by the Company**

| **Date** | **Dec 17** | **Dec 28** | **Jan 14** | **Jan 27** | **Jan 27** | **Variance Low vs. High** |
|---|---|---|---|---|---|---|
| Source | City 1-15 | City 1-15 rev | CLV 2 | CLV 2 rev | End Bal RRDTE 2 (a) | |
| 1991 | 504,235 | 399,194 | 587,190 | 543,716 | 397,703 | 49% |
| 1992 | 295,700 | 190,658 | 378,655 | 298,148 | 152,134 | 148% |
| 1993 | 189,495 | 84,453. | 272,450 | 124,205 | 56,771 | 380% |
| 1994 | 205,382 | 100,340 | 288,337 | 190,546 | 123,112 | 105% |
| 1995 | 262,438 | 157,397 | 345,393 | 291,889 | 224,445 | 85% |
| 1996 | 310,358 | 205,317 | 393,313 | 414,184 | 346,099 | 102% |
| 1997 | 425,174 | 320,133 | 508,129 | 574,411 | 506,326 | 58% |
| 1998 | 534,565 | 429,523 | 617,520 | 686,902 | 618,187 | 60% |
| 1999 | 683,291 | 578,249 | 766,246 | 851,618 | 709,539 | 47% |
| Average | | | | | | 115% |

In spite of the above lack of correlation, the Company made the following statement on the following dates:

Dec 17 " . . .once the City's calculations have been corrected for the inclusion of salvage and the cost of removal, there is a very close correlation between the actual amounts on the Company's books and the City's theoretical calculation." (City 1-15)

Dec 28 The above statement was left unchanged even though removal costs numbers were increased by $105,000. (ex City 1-15 rev)

Jan 14 " The corrected 2003 value . . .correlates closely, being only 2.7% lower than the Company's actual net book value as of December 31 2003." (NSTAR CLV p 27)

Jan 27 " Moreover, the Company's historical work papers demonstrate that the Company's accumulated depreciation figure for street lighting equipment, as reflected in Ex NSTAR 1, ties (within $107) to the Company's annual street lighting related activity." (RR DTE-2 p 3)

How is it that removal costs, and therefore the running total of accumulated depreciation changed so wildly, and the correlation with the Company's books remained close throughout the various submissions over the past six weeks? The answer appears to be associated with other changes made in each submission by the Company to counteract the impact of the changes in the removal costs. For example, note the use of one constant depreciation rate in NSTAR CLV 2 of 6.29% for each year since 1993, (the single rate used to calculate the depreciation expense paid by the city, that has been embedded in the streetlight tariff for that time period, and the rate required by DTE 01-25) as compared to the use of a depreciation rate that changed 10 times in the 11 years since 1993 in NSTAR CLV 2 (rev) submitted on January 27. Or, note the comment at page 3 of RR DTE-2 ; "After 1992, it is usually necessary to subtract all or a portion of the value on the line "Retirement WIP" to distribution plant accumulated depreciation to make this tie."

These gratuitous counterbalancing changes in other aspects of the accumulated depreciation data base for the years after 1992 just emphasize the lack of reliability of record request data of this sort, and consequently the inequity of using this sort of data to impose over $1 million in removal cost on the City of Cambridge in this proceeding.

5) **The Company argues, incorrectly, that the department approved calculation of unamortized investment in the prior cases, was only used because actual data regarding net book value was not available.**

The Company states:

> "The department's findings in previous cases demonstrate that a proxy determination of unamortized investment is used only when actual data is not available." (Brief p 10)

The fundamental problem in the earlier cases related to the use of accounting rules that, although valid for general utility accounting purposes, were inappropriate as a method to determine streetlight purchase prices under the Act. The same fundamental problem exists in this case.

The Company has used generic rules to *allocate depreciation* between distribution plant, in general, and streetlight plant, in particular, for the purpose of calculating the net book value of streetlights in the past. In the Company's view, all that is required, therefore, is to open the Company's books and inquire what that "net book value" is.

That is no more legitimate in Cambridge than it would have been in any of the earlier cases. The central complaint in all of the earlier cases related to the rules and assumptions used by the company to under-allocate depreciation to the streetlight plant. In both DTE 98-89 and DTE 01-25 the department ruled that the generic accounting rules used by the Company to allocate depreciation between distribution plant and streetlight plant, while valid for some utility purposes, were inappropriate for the purpose of determining unamortized investment under the Act.

> ‘The use of a composite distribution plant depreciation rate is appropriate where the Company is not required to assign a value to the individual components of the distribution plant. Here, the Act requires valuation of street lighting equipment . . . a valuation based on the composite distribution plant depreciation rate is not appropriate. The Company must value street lighting equipment based on a depreciation rate that recognizes the useful life of the street lighting equipment, not a composite distribution plant depreciation rate.” (DTE 98-89 p.4)

The issue in DTE 98-89 was not the allocation of streetlight plant value between Lexington and Acton, it was the use of a composite distribution plant depreciation rate in both Lexington and Acton.

The central complaint in DTE 01-25 had to do with the allocation of depreciation from the distribution plant using generic accounting rules that assigned positive values to over depreciated streetlights.

> “Commonwealth’s method is not reasonable because it . . .does not permit over-depreciated streetlights to have a negative value.” (DTE 01-25 P 6)
>
> “The town method . permits fully depreciated streetlights with negative values to reduce the unamortized investment of the newer streetlights in ascertaining the purchase price to be to be paid” (DTE01-25 p 6)

The department rejected of the Company’s generic method of assigning positive value to “over depreciated lights”, and embraced the Town method of assigning negative value to “over depreciated lights”. The central issue in DTE 01-25 was not the allocation of value between the three towns, the central issue was the use of a generic accounting rules that denied the benefit of over depreciation to all three towns.

The City of Cambridge has the exact same complaint in this case. The Company’s calculation of the “net book value” of Cambridge streetlights, assigns a positive value to streetlight equipment installed in Cambridge between 1943 and 1953. (NSTAR 1, p 1, col E). And in this case, the City has the additional complaint that the

Company is attempting to allocate removal costs in a fashion that uses generic accounting rules that misallocate removal costs to streetlights that should be appropriately allocated to distribution plant.

The fact that the CELCo may have used certain accounting methods to develop a book value for streetlights in Cambridge that includes assigning positive value to 60 year old streetlight equipment, does make that accounting method any more valid for calculating unamortized investment under the Act in Cambridge than it was valid in DTE 01-25. The fact that the CELCo may have used certain accounting methods to develop a book value for streetlights in Cambridge that assigned removal costs to streetlights but retained insurance recoveries in the general distribution account, may be an acceptable form of accounting for general utility purposes. That does not mean that those same accounting practices are an appropriate method for calculating unamortized investment under the Act.

The City believes the precedent is clear, and the same formula for calculating accumulated depreciation that was approved in DTE 98-89, cited with favor as the preferred method in DTE 01-25 and applied again in DTE 02-11 is the correct method for "calculating" unamortized investment in this case.

6) **If the City had claimed $621,000 of negative net salvage ($821,000 as reduced by the January 27 submission) a year and half ago, this would have changed the nature of the negotiation, the nature of the dispute, the nature of the discovery, and the nature of the Hearing.**

Even if the statute allowed for these types of removal costs to be included in the purchase price for acquired equipment (and it doesn't), even if department precedent allowed for these types of removal costs to be included in the purchase price (and it doesn't), and even if the Company's claim for these removal costs on December 17, 2004 was based on consistent, complete and reliable data (which it isn't), the City would still have grounds to object to this claim because of the late filed nature of the claim.

The City made its first request for a calculation of the purchase price using the formulas approved in the prior ruling in July of 2003. When the Company refused, the City hired Resource Insight to make that calculation. At the June 4, 2004 meeting in the Company's Westwood offices Mr. Chernick reviewed his calculation with the Company, using the department formula from the prior rulings. The Company continued to refuse to make the requested calculation.

Finally on December 17, 2004, 17 months after the first request of the City, and two weeks after the deadline for further discovery questions from the City had passed, the Company made the calculation in City 1-13 (a) and in so doing raised for the first time more than $821,275 million in negative net salvage, since 1989 (See NSTAR CLV p 20). The January 27 restatement reduced that number to approximately $621, 000 of negative net salvage since 1989.

If the City had this information 17 months ago, or even 6 months ago, The City would have probed the following questions, first at the negotiating table, and if unsuccessful there, in discovery:

1) Why are there no salvage values for the last five years? Is the exclusion of salvage values an assumption built into the new program installed in 2000?

2) Why are there no insurance recoveries for the past five years, and probably the past 13 years, even though the City experiences on average one vehicle caused knockdown of a dedicated streetlight pole every month? (At $3,000 per knockdown this would represent more than $500,000 of insurance recoveries in the 14 years between 1989 and 2003, which is not an insignificant sum in light of the $621,000 in net salvage claimed.) Is that an assumption embedded in the new program since 2000, and the company's practice prior to 2000? Are those streetlight related insurance recoveries credited to the general distribution account?

3) Why are there no contractor reimbursement for the past five years, and probably the past 13 years, even though the City experiences multiple requests by contractors every year for the temporary take down and / or relocation of dedicated streetlight poles to accommodate construction projects? Is that an assumption embedded in the new program since 2000, and the company's practice prior to 2000? Are those streetlight related contractor reimbursements credited to the general distribution account?

4) What streetlight equipment is responsible for the majority of removal costs Is it the underground conductor and conduit that appears to be responsible for the majority of the removal cost in the general distribution accounts ( see concentration of removal cost in account 367 in RR DTE 2 (b) through (h))? And if so, why isn't it reasonable to allocate these underground conductor removal costs to the Company because the company will retain the majority of this equipment to service the 895 private and MDC streetlights on the main streets of Cambridge? Is the lack of precision in allocating these costs between the streetlights sold, and the distribution plant retained, creating a cross subsidy of private streetlight customers by the City of Cambridge?

All of the above questions could be addressed in a "rate case proceeding" of the sort referenced by Mr. Stevens at pages 151 and 152 of the transcript, and by the commission in DTE 01-25.

> "If the Company does not fully recover its cost for the sale of its streetlights to the Towns, Commonwealth can address any under-recovery through the normal ratemaking process" (DTE 01-25 p 7)

The Company's witness acknowledged that such a rate case would be a "reasonable" forum for addressing the type of under recovery claimed in DT 01-25. (TR p 155)

It is fundamentally unfair to impose over $1 million in un-examined, un-reviewed, inconsistent and incomplete removal costs on the City Cambridge that the City has had no opportunity to challenge through normal discovery procedures, because the Company chose to raise the issue of removal costs and the related negative net salvage after the opportunity for that discovery had passed.

## Request for Relief

We request the department to direct the Company to calculate the "unamortized investment" of the total streetlight plant using the preexisting precedent as approved for Lexington, Edgartown and Waltham in DTE 98-89, 01-25, and 02-11, as demonstrated for Cambridge in Exhibit CAM 5, and confirmed by the Company in City-13(a).

We request the department to direct the Company to use the Company's proposed formula to allocate that unamortized investment between the lights to be sold in Cambridge and the lights to be retained in Cambridge, as demonstrated by the Company in NSTAR 1, and by the City in Ex. CAM 5. The Company's introduction of a new and unprecedented formula, on December 17, 2004, for making this allocation between lights to be sold and lights to be retained, in City 1-13(a), should be rejected.

Respectfully Submitted :

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